



Energy for
generations

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Statutory consultation on changes to the Capacity Market Rules – ESB response

ESB welcomes the opportunity to respond to this consultation.

We are encouraged that Ofgem have refrained from making any significant reforms to the Capacity Market rules through this year's consultation process as ESB firmly believe that a stable and predictable framework are vital to the functioning and investibility of the Capacity Mechanism. We would however note that there are a number of minor changes, some of which have been rejected in previous consultation rounds, that Ofgem have decided against taking forward, often citing regulatory stability as the reasoning. Although stability is vital such amendments would have no significant impact on the functioning of the Capacity Mechanism and in our view would only improve the efficiency of the auctions. We would therefore ask Ofgem to clarify if and when they might propose to take such amendments forward, or whether they will not be considered in any future consultation rounds.

On a related note a number of rule change proposals have been rejected as they require amendments to the Regulations for which Ofgem are not responsible. While we agree that the rule change process is not the appropriate forum to address these changes it is difficult to see how industry should proceed with such required changes as there is currently no formal process through which industry can raise regulatory change proposals. We would therefore request that Ofgem support industry by engaging with BEIS to ensure such regulatory changes are considered.

The rest of this document sets out our response to Ofgem's specific consultation questions.

We are happy to engage further with Ofgem on any of the points raised in this response.

Regards,
Will Chilvers

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ESB response to consultation questions:

CQ1: Do you agree with the introduction of a financial penalty under Rule 6.8.4 for failing to meet refurbishment milestones?

We agree that there should be some form of penalty for failure to meet refurbishment milestones. Although exclusion from T-1 auctions would ensure that parties did not view the refurbishment contract as a free option we agree that it could have detrimental effects on auction prices and volumes. We therefore welcome the introduction of financial penalties. To maintain consistency with other non-delivery incentives we suggest the penalty should be set at £15/kW. Setting the penalty at this level provides a financial disincentive to renege on contracts and reduces the arbitrage opportunity between the T-4 and T-1 auctions.

CQ2: Should the SO be required to update the information included in a CMN and if so what should such updates include? Please clarify why participants need this information in a CMN and cannot access it readily elsewhere.

We are of the view that information currently provided in a CMN is sufficiently clear and no other information is required at this time, particularly as the current CMN process has been used on very few occasions. Once CMNs become more regular and a measurable deficiency in information or timing of notices is identified then we would support a review, but only at such a time.

CQ8: Do you agree with our conclusions with regard to our preferred testing format?

It is unclear from Annex F whether it is the Capacity Obligation or the Connection Capacity that would be tested. We assume Ofgem intend to test the full Connection Capacity as simply testing the Capacity Obligation would undermine the purpose of the de-rating factors leading to potential under delivery against capacity obligations. It is also unclear from Annex F whether the proposed testing regime would be for Existing CMUs only or would also apply to New-Build CMUs. It is important that the New-Build CMUs are also incentivised to deliver on the capacity that they nominate at the pre-qualification stage and that the requirement for New-Build to hold TEC up to their nominated capacity remain.

The above aside, we agree that any potential shortfall in capacity should be identified prior to the T-1 auction to ensure there is an opportunity to acquire the requisite capacity. We are however concerned with the proposals as they stand regarding the requirement to prove output in a 12 month period prior to the prequalification window for the T-1 auction. There may be occasions where a CMU is unable to prove their capacity during this 12 month period, in particular if the CMU is mothballed or on a planned or unplanned outage, which is not unreasonable to expect up to 2 years prior to the start of a delivery year. Given this we would propose that the timescales for proving a CMUs output are extended to allow nomination of output for the last 12 month period where the CMU was fully operational, provided this is prior to the T-1 stage. This would allow for outages and potential mothballing and bring the regime in line with the existing output nomination process.



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CQ9: Do you think our proposed approach to setting incentives (threshold and penalty) will effectively reduce instances of overstating capacity?

Whatever the final arrangements for nominating capacity it is vital that parties are incentivised to nominate their capacity accurately and where possible eliminate the opportunity for gaming. Without seeing more detailed analysis we cannot comment whether the figures proposed by Ofgem are the most appropriate but will be sure to provide views when more detailed analysis becomes available.